

# PUBLICATION

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## Final Energy Credit Regulations Under Section 48

Authors: Stephen E. Luttrell, Peyton H. Lacoste

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### Overview

The final regulations, scheduled to be published in final form by the Internal Revenue Service (IRS) and the Department of the Treasury on December 12, 2024, provide comprehensive rules regarding the energy credit available under Section 48 of the Internal Revenue Code (Code). These regulations implement amendments from the Inflation Reduction Act of 2022 (IRA) to Section 48 and affect taxpayers investing in energy property eligible for the energy credit for which construction started prior to January 1, 2025. The regulations cover various issues, including definitions, eligibility criteria, and specific rules for different types of energy property.

These regulations provide more specific details and greater clarity of the provisions included therein and were issued after consideration of over 350 comments submitted in response to the most recent proposed regulations issued under Section 48 in November 2023. Energy property for purposes of Section 48 includes solar, wind, biogas, geothermal, and certain energy storage.

### Key Provisions

#### 1. Definition of Energy Property (§1.48-9)

The final regulations under §1.48-9 provide detailed definitions and rules for determining what constitutes energy property eligible for the energy credit under Section 48 of the Code. These regulations are comprehensive and cover various aspects, including the types of energy property, requirements for eligibility, and specific rules for different components and technologies.

#### 2. Prevailing Wage and Apprenticeship Requirements (PWA) (§1.48-13) and Recapture Rules (§1.48-13(c))

The final regulations under §1.48-13(c) provide detailed rules for the recapture of the increased credit amount if the prevailing wage requirements are not met during the specified recapture period. In particular, § 1.48-13(c) requires that taxpayers who claim the increased credit amount for energy projects must adhere to prevailing wage requirements during the construction phase and for a five-year period thereafter. The rules provide a clear framework for determining recapture events, calculating recapture amounts, and reporting compliance, thereby promoting adherence to labor standards.

#### 3. Energy Project Definition (§1.48-13(d))

The final regulations under §1.48-13(d) define the term "energy project" and provide criteria for determining when multiple energy properties are treated as a single energy project for purposes of the increased credit amount, domestic content bonus credit amount, and the increase in credit rate for energy communities. The definition of an "energy project" in the final regulations provides particular and specific requirements rather than

utilizing a "facts and circumstances" approach suggested by commenters and applied in other tax guidance. This definition is crucial for applying the increased credit amounts for energy communities, domestic content bonus credit amount, and the increase in credit rate for energy communities, ensuring consistency and clarity for taxpayers

#### **4. One Megawatt Exception (§1.48-13(e))**

The final regulations under §1.48-13(e) provide detailed rules for the "One Megawatt Exception," which allows certain energy projects to qualify for an increased credit amount without meeting the PWA requirements. The exception is based on the maximum net output of the energy project, with specific rules and conversion factors provided for different types of energy properties.

#### **5. Retrofitted Energy Property (80/20 Rule) (§1.48-14(a))**

The final regulations under §1.48-14(a) provide detailed rules for determining when retrofitted energy property can be considered originally placed in service for purposes of the energy credit under Section 48 of the Code (commonly referred to as the "80/20 Rule"). Section 1.48-14(a) allows retrofitted energy property to be considered originally placed in service if the value of the used components does not exceed 20 percent of the total value of the unit of energy property. This rule clarifies that substantial new investment in existing energy property can qualify for the energy credit, promoting the retrofitting and upgrading of energy facilities. The final regulations clarify that in situations in which energy property has already been placed in service, existing units of energy property cannot qualify for the credit without the 80/20 Rule (with the exception of the modification of energy storage technology as provided in proposed §1.48-9(e)(10)(iii)).

#### **6. Qualified Biogas Property (§1.48-9(e)(11))**

The final regulations under §1.48-9(e)(11) provide a comprehensive definition of qualified biogas property, including systems that convert biomass into methane-rich gas and equipment that cleans or conditions the gas for sale or productive use. The regulations also address the methane content requirement and allow for flaring under specific conditions, ensuring clarity and consistency for taxpayers investing in biogas systems.

#### **7. Energy Storage Technology (§1.48-9(e)(10))**

The final regulations under §1.48-9(e)(10) provide a comprehensive framework for defining and qualifying energy storage technology for the energy credit. The guidance includes specific criteria for electrical, thermal, and hydrogen energy storage properties, ensuring clarity and consistency for taxpayers investing in these technologies.

#### **8. Interconnection Property and Sale-Leaseback Transactions §1.48-14(h)(2) (previously proposed §1.48-14(g)(2)) and Five-Megawatt Limitation §1.48-14(h)(3)(iii) (previously proposed §1.48-14(g)(3)(iii))**

The final regulations under §1.48-14(h)(2) provide additional rules for the purposes of determining the original use of interconnection property in the context of a sale-leaseback or lease transactions.

Additionally, the final regulations further define the Five-Megawatt Limitation (the "Limitation") under §1.48-14(h)(3) as it relates to interconnection property by providing an additional example regarding the Limitation that illustrates how the Limitation applies to an interconnection agreement involving multiple energy properties owned by a single taxpayer. The new example explains that even if the interconnection agreement allows for a maximum output of ten megawatts (as measured in alternating current), the taxpayer can still calculate Section

48 credits for each energy property, provided each has a maximum net output of no more than five megawatts (as measured in alternating current).

## 9. §1.6418-5 Special Rules

The special rules under §1.6418-5 provide a framework for handling the recapture of increased credit amounts under §48(a)(10)(C), including notification requirements and the responsibilities of both the eligible taxpayer and the transferee taxpayer. These provide for proper tax administration and compliance in cases where credits are transferred and subsequently subject to recapture.

## Conclusion

The final regulations on energy property and energy credit provide detailed guidance on the Section 48 credit. The regulations aim to encourage investment in energy property by providing clear rules and definitions, ensuring taxpayers can effectively claim the energy credit and related bonus credit amounts.

If you have questions or concerns regarding this alert, please reach out to [Stephen E. Luttrell](#), [Peyton H. Lacoste](#), or any member of Baker Donelson's [Tax Group](#).